YB Datuk Dr Soon Choon Teck v YB Datuk Robert Lau Hoi Chew & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO Q-2–690 OF 2008
MOHD GHAZALI, JAMES FOONG AND SULAIMAN DAUD JJCA
12 FEBRUARY 2009

Civil Procedure — Amendment — Application to amend statements — When to allow — Principles applicable — Whether judge exercised his discretion judicially

Civil Procedure — Amendment — Statement of claim — Principles applicable — Amendment sought to supplement matters pleaded in the statement of claim — Whether application for amendment ought to be allowed

The appellant claimed damages for libel against the respondents in respect of two statements made by the first respondent. The statements were published in a newspaper owned by the second respondent, edited by the third respondent and distributed by the fourth respondent. On 11 March 2008, the appellant applied to amend his statement of claim, inter alia, to add a new para (8A) to expressly provide that the impugned statements referred to and were understood to refer to him ('the appellant'). The amendments were also intended to give detailed particulars of the facts and circumstances to show that the statements referred to the appellant. The High Court, however, rejected the proposed amendment to add the new paragraph for the following reasons: (i) the proposed amendment which sought to add a new cause of action was statue-barred by limitation of time; (ii) the appellant had not set out convincing grounds for the court to allow the amendment; and (iii) the appellant had failed to put his case at the earliest opportunity. The appellant thus appealed to the Court of Appeal.

Held, allowing the appeal with costs:

(1) Under O 20 r 5 of the Rules of the High Court 1980, a judge has wide discretion to amend pleadings. As a matter of general principle, leave to amend is readily given at any stage of the proceedings, however late, provided that no injustice is caused to the parties. *Yamaha Motor Co Ltd v Yamaha (M) Sdn Bhd & Ors* [1983] 1 MLJ 213 referred. Leave to amend may also be given in a case where the application is made after

limitation has set in and the amendment seeks to add a new cause of action, if it arises out of the same facts as a cause of action in respect of which relief has been claimed (*Abdul Johari bin Abdul Rahman v Lim How Chong & Ors* [1997] 1 MLJ 629 referred and; *Hock Hua Bank Bhd v Leong Yew Chin* [1987] 1 MLJ 230 referred (see paras 16–19).

(2) In the instant case, even if the proposed amendment gave rise to a new cause of action, it did not turn the suit from one character into another. The proposed amendment merely sought to supplement what had been pleaded earlier in the statement of claim to show that the words complained of referred to the appellant (see para 21)

(3) In the instant case, there was only an eight to nine month delay in making the application which did not constitute such an inordinate delay to reflect any lack of bona fide on the appellant's part. Generally, an amendment ought to be allowed even if it comes late, if the amendment is necessary to do justice between the parties, so long as any hardship occasioned thereby can be compensated by money. There was nothing in the evidence to suggest that the present application was made in bad faith, or that the amendment, if allowed, would cause any prejudice or injustice to the respondents. The Court of Appeal would accept the explanation given on behalf of the appellant that the proposed amendment was necessary to do justice between the parties, and to enable the court to determine the real question in controversy between them. *Taisho Co Sdn Bhd v Pan Global Equities Bhd & Anor* [1999] 1 MLJ 359 distinguished; *Associated Leisure Ltd (Photographic Equipment Co Ltd) v Associated Newspaper Ltd* [1970] 2 QB 450 referred; *Ultra Dimension Sdn Bhd v Sepadan Tuah Sdn Bhd; Genesis The; AS Agency Sdn Bhd (Third Party)* [2000] 6 CLJ 548 referred; *HSBC Bank Malaysia Bhd v Macquarie Technologies (M) Sdn Bhd* [2004] 4 MLJ 398 (followed) (see paras 22, 23 & 25).

(4) On the facts, the High Court judge had failed to exercise his discretion judicially. He had also misdirected himself in putting too much weight on the issue of delay and limitation while failing to take into account the general principles applicable in such an application (see para 26).

[Bahasa Malaysia summary

Perayu menuntut ganti rugi untuk libel terhadap responden-responden berkaitan dua kenyataan yang telah dibuat oleh responden pertama. Kenyataan-kenyataan tersebut telah diterbitkan dalam sebuah akhbar yang dimiliki oleh responden kedua, disunting oleh responden ketiga dan diedarkan oleh responden keempat. Pada 11 Mac 2008, perayu telah memohon untuk meminda penyataan tuntutannya, antara lain, untuk menambah perenggan baru (8A) yang jelas memperuntukkan bahawa

kenyataan-kenyataan yang dipersoalkan tersebut merujuk kepada perayu. Walau bagaimanapun, Mahkamah Tinggi telah menolak cadangan pindaan untuk menambah perenggan baru itu kerana sebab-sebab berikut: (i) cadangan pindaan yang dipohon untuk menambahkan kausa tindakan baru dihalang oleh statut oleh had masa; (ii) perayu tidak mengemukakan alasan-alasan yang meyakinkan agar mahkamah membenarkan pindaan itu; dan (iii) perayu telah gagal mengemukakan kesnya pada peluang seawal mungkin. Oleh itu perayu telah merayu ke Mahkamah Rayuan.

Diputuskan, membenarkan rayuan dengan kos:

(1) Di bawah A 20 k 5 Kaedah-Kaedah Mahkamah Tinggi 1980, seorang hakim mempunyai budi bicara yang luas untuk meminda pliding. Sebagai rukun am, kebenaran untuk meminda diberikan dengan mudah pada mana-mana peringkat prosiding, tidak kira selewat mana, dengan syarat tiada ketidakadilan berlaku kepada pihak-pihak *Yamaha Motor Co Ltd v Yamaha (M) Sdn Bhd & Ors* [1983] 1 MLJ 213 dirujuk. Kebenaran untuk meminda juga diberikan dalam kes di mana permohonan dibuat selepas had masa bermula dan pindaan itu memohon untuk ditambahkan kausa tindakan baru; jika ia berbangkit daripada fakta sama sebagai kausa tindakan di mana relief telah dituntut (*Abdul Johari bin Abdul Rahman v Lim How Chong & Ors* [1997] 1 MLJ 629 dirujuk dan *Hock Hua Bank Bhd v Leong Yew Chin* [1987] MLJ 230 dirujuk (lihat perenggan 16–19).

(2) Dalam kes ini, meskipun cadangan pindaan menimbulkan kausa tindakan baru, ia tidak menukar guaman daripada satu ciri ke ciri yang lain. Cadangan pindaan itu hanya memohon untuk menambah apa yang telahpun diplidkan sebelumnya dalam penyataan tuntutan untuk menunjukkan bahawa perkataan-perkataan yang diadukan merujuk kepada perayu (lihat perenggan 21).

(3) Dalam kes ini, hanya terdapat kelewatan lapan hingga sembilan bulan dalam membuat permohonan itu yang tidak menyebabkan kelewatan melampau untuk menggambarkan apa-apa kekurangan bona fide di pihak perayu. Secara am, suatu pindaan patut dibenarkan meskipun dikemukakan lewat, sekiranya pindaan itu perlu untuk berlaku adil antara pihak-pihak, selagi sebarang kesukaran yang berlaku boleh diberikan pampasan wang. Tiada sebarang keterangan untuk mencadangkan bahawa permohonan ini telah dibuat dengan niat jahat, atau pindaan itu, jika dibenarkan, akan menyebabkan prasangka atau ketidakadilan kepada responden-responden. Mahkamah Rayuan akan

menerima penjelasan yang diberikan bagi pihak perayu bahawa cadangan pindaan itu perlu untuk berlaku adil antara pihak-pihak, dan agar membolehkan mahkamah menentukan persoalan kontroversi sebenar antara mereka (lihat perenggan 22, 23 & 25); *Taisho Co Sdn Bhd v Pan Global Equities Bhd & Anor* [1999] 1 MLJ 359 dibeza; *Associated Leisure Ltd (Photographic Equipment Co Ltd) v Associated Newspaper Ltd* [1970] 2 QB 450; *Ultra Dimension Sdn Bhd v Sepadan Tuah Sdn Bhd Genesis The; AS Agency Sdn Bhd (third party)* [2000] 6 CLJ 548 dirujuk; dan *HSBC Bank Malaysia Bhd v Macquarie Technologies (M) Sdn Bhd* [2004] 4 MLJ 398 diikut.

(4) Berdasarkan fakta, hakim Mahkamah Tinggi telah gagal untuk melaksanakan budi bicaranya secara adil. Beliau juga telah salah arah kerana memberi penekanan terhadap isu kelewatan dan had masa sedangkan gagal untuk mengambilkira prinsip-prinsip am yang terpakai dalam permohonan sebegini (lihat perenggan 26).]

Notes

For a case on application to amend statements, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) para 515.

For cases on statement of claim, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 570–587.

Cases referred to

Abdul Johari bin Abdul Rahman v Lim How Chong & Ors [1997] 1 MLJ 629; [1977] 1 CLJ 361, CA (refd)

Associated Leisure Ltd (Photographic Equipment Co Ltd) v Associated Newspaper Ltd [1970] 2 QB 450, CA (refd)

Atip bin Ali v Josephine Doris Nunis & Anor [1987] 1 MLJ 82, HC (refd)

Bruce v Odhams Press Ltd [1936] 1 KB 697, CA (refd)

Clarapede v Commercial Union Association (1883) 32 WR 263 (refd)

Hock Hua Bank Bhd v Leong Yew Chin [1987] 1 MLJ 230; [1987] 1 CLJ 126, SC (refd)

HSBC Bank Malaysia Bhd v Macquarie Technologies (M) Sdn Bhd [2004] 4 MLJ 398; [2004] 3 CLJ 121, CA (folld)

MGG Pillai v Tan Sri Dato' Vincent Tan Chee Yioun [2002] 2 MLJ 673; [2002] 3 CLJ 577, FC (refd)

Public Bank Bhd v Kemajuan Flora Sdn Bhd & Ors [2003] 1 CLJ 790, HC (refd)

Taisho Co Sdn Bhd v Pan Global Equities Bhd & Anor [1999] 1 MLJ 359; [1999] 1 CLJ 703, CA (distd)

Ultra Dimension Sdn Bhd v Sepadan Tuah Sdn Bhd; Genesis The AS Agency Sdn Bhd (Third Party) [2000] 6 CLJ 548 (refd)

Yamaha Motor Co Ltd v Yamaha (M) Sdn Bhd & Ors [1983] 1 MLJ 213; [1983] CLJ (Rep) 428, FC (refd)

Legislation referred to

Rules of the High Court 1980 O 20 rr 2, 5, 5(5)

Henry Ling Kuong Meng (Ling & Wong) for the appellant.
Robert Lau (Stephen Robert & Wong) for the first respondent.
Satinder Singh Sandhu (Sandhu & Co) for the second, third and fourth respondents.

Sulaiman Daud JCA:

[1] This is an appeal by the appellant against that part of the decision of the learned High Court judge given on 13 May 2008 which disallowed his application for leave to amend the statement of claim in a libel action to introduce a new para 8A to give particulars of the allegation that the statements or words complained of referred to him ('the proposed amendment'). After hearing submissions of counsel from both parties, we allowed the appeal with costs. We now give our reason for the decision.

[2] At all material times the appellant was a State Assemblyman and an Assistant Minister of Housing, Sarawak. The first respondent was a Member of Parliament and the Deputy Federal Minister of Housing and Local Government, Malaysia. Both of them were members of the Sarawak United People's Party ('SUPP') holding high office in the Sibu Branch and in the central working committee of the party.

[3] In this action the appellant claims damages for libel against all the respondents in respect of two statements made by the first respondent on 6 February 2007 and 11 February 2007 which were published in the See Hua Daily News on 7 February 2007 and 12 February 2007 respectively. The second respondent is and was at all material times the proprietor and publisher of the newspaper. The third respondent was the chief editor of the newspaper and the fourth respondent was its distributor.

[4] The impugned statements or words so published are set out in para 8 and 10 of the statement of claim respectively, which in the english translation read as follows:

(a) in para 8:

> Lau Hoi Chew said emotionally, 'It's enough! Don't continue doing it! Don't think that with the backing of Party's Chairman/President, you can

do nonsense. You may burn my backyard and I may burn yours too. It's a tooth for a tooth.' A

Datuk Low Hoi Chew said that someone, feeling superior of himself and thinking that he is the cleverest person, wanted to become the chairman and be the candidate for the election. Sending out poison letters, SMS to everywhere. Can support this kind of person to become the chairman if he stands for election? B

(b) in para 10:

Described Soon Choon Teck as ungrateful person and acted contrary to justice C

He (Datuk Robert Lau Hoi Chew) described Soon Choon Teck as an ungrateful person and acted contrary to justice who had discarded a group of cadres who helped him get elected. This kind of person should not be supported.

He pointed out that there were people in Sibu branch leaving the team. It was the result of the seeds sown by a particular person. This is something dangerous. D

He said, 'When you sow the seeds of disunity in my backyard, I also can sow them in yours. What would be the consequence then?'. E

[5] The appellant pleaded that the impugned words in their natural and ordinary meaning or by way of innuendo meant, and were understood to mean, one or more of the defamatory meanings as set out in para 20 of the statement of claim, which include the following, that is to say: F

(a) the plaintiff is unscrupulous, ruthless, dishonourable, selfish and greedy politician;

(b) the plaintiff is an ungrateful person and acts contrary to justice, a hypocrite or untrustworthy person; G

(c) the plaintiff is thankless person, or discreditable person or a person lack of any integrity;

(d) the plaintiff is mischievous and wicked person. H

[6] The respondents in their defence denied that the said words or any of them referred to or were understood to refer to the plaintiff. They also denied that the words used have, and were understood to bear, the meanings alleged or any meaning defamatory to the appellant. They also relied on the defence of fair comment and qualified privilege. I

[7] On 11 March 2008 the appellant filed an application before the learned

judge in chambers to make certain amendments to the statement of claim, including the addition of a new para 8A to expressly provide that the impugned statements or words referred and were understood to refer to the appellant, together with the detailed particulars of the facts and circumstances to show that the same referred to, or were published of, the appellant. The new para 8A reads as follows:

8A The above statements or words referred and were understood to refer to the plaintiff:

Particulars of reference

8A.1 The plaintiff repeats paragraph 1 above.

8A.2 In or about 2004, the Central Working Committee (CWC) of the SUPP, the party's decision-making body, sanctioned the formation of SUPP branches in all the 71 state constituencies in Sarawak.

8A.3 In or about October 2006, the Plaintiff proposed to set up SUPP Dudong Branch naming himself as chairman of the protem committee. Following that, the 1st Defendant and other persons of the SUPP Sibu Branch publicly criticised and discredited the Plaintiff and the same were published in various newspapers.

8A.4 Several leaders of the SUPP Sibu Branch including the 1st Defendant had publicly blamed and accused the Plaintiff of breaking up the Sibu Branch after the Plaintiff publicly announced his plans to set up the SUPP Dudong branch in 2006.

8A.5 The Plaintiff had also claimed and or as published in local newspapers that the CWS had sanctioned that he as Dudong State Assemblyman was entrusted to take charge of the formation of the proposed SUPP Dudong Branch.

8A.6 On 6.2.2007, the CWS of the SUPP has resolved that a new branch to be headed by state assemblyman at the state constituency concerned. This information appeared in newspapers on 7.2.2007.

8A.7 On 6.2.2007, the 1st Defendant met with some 400 members of SUPP Sibu Branch named Datuk Tiong Thai King as the protem committee chairman of the proposed Dudong Branch, and stated that the Plaintiff was not the protem committee chairman of the proposed Dudong Branch. This information appeared in newspapers on 7.2.2007.

8A.8 The 1st Defendant had publicly expressed his personal preference to have YB Datuk Tiong Thai King, MP for Lanang Parliamentary constituency to head the protem committee of the proposed Dudong Branch. This was published in newspapers.

8A.9 The Plaintiff also publicly claimed that he himself as the State Assemblyman for Dudong constituency was legitimately entitled to head and lead the Dudong Branch. This was made known in public.

8A.10 By reason of their knowledge of the said facts and matters, the Plaintiff was identified by a large but unquantifiable number of readers of the impugned statements or words complained of as the individual referred to by the said statement or words published at page A2 of SEE HUA DAILY NEWS on the 7th February 2007.

[8] The learned judge allowed the other amendments but rejected the proposed amendment to add the new para 8A, and hence this appeal.

[9] The judge rejected the proposed amendment on three grounds. First, he held that the proposed amendment which seeks to add a new cause of action to the plaintiff's claim is statue-barred by limitation of time. Secondly, the learned judge held that the appellant has not set out convincing grounds for the court to allow the amendment, and thirdly, the appellant has failed to put his case at the earliest opportunity.

[10] Mr Henry Ling, for the appellant, submitted that the learned judge has erred in facts and in law when he held that the new para 8A sought to introduce a new cause of action against the respondents. He argued that the proposed amendment merely seeks to define the additional facts or issues in controversy which do not give rise to a new cause of action, or change the action into a different character, as it is still based on the same impugned statements or words. Alternatively, it is submitted that even if the proposed amendment sought to introduce a new cause of action in the original statement of claim it is still not a bar for the court to grant such leave.

[11] In support of his submission learned counsel in his written submission referred to the relevant provisions of O 20 r 5 of the Rules of the High Court 1980 ('RHC'), and the numerous familiar authorities on this subject, which include *Yamaha Motor Co Ltd v Yamaha (M) Sdn Bhd & Ors* [1983] 1 MLJ 213; [1983] CLJ (Rep) 428; *Public Bank Bhd v Kemajuan Flora Sdn Bhd &*

Ors [2003] 1 CLJ 790; *Abdul Johari bin Abdul Rahman v Lim How Chong & Ors* [1997] 1 MLJ 629; [1997] 1 CLJ 361, *MGG Pillai v Tan Sri Dato' Vincent Tan Chee Yioun* [2002] 2 MLJ 673; [2002] 3 CLJ 577; and *HSBC Bank Malaysia Bhd v Macquarie Technologies (M) Sdn Bhd* [2004] 4 MLJ 398; [2004] 3 CLJ 121. I will revert to some of these authorities later in the course of my judgment.

[12] Both Mr Robert Lau, for the first respondent, and Mr Satinder Singh Sandhu, for the second, third and fourth respondents, adopted a common stand in opposing the appeal. Mr Robert Lau pointed out the proposed amendment relates to the statements set out in paras 7 and 8 of the statement of claim which did not identify the appellant, by name or description, as the person referred to in the statements. By reason thereof he contended that the appellant has no cause of action against the respondents.

[13] He further argued that the proposed amendment which seeks to give particulars of the facts and special circumstances to link the defamatory words to the appellant is, in effect, an attempt to rectify the mistake or omission by introducing a new cause of action. It is submitted that such an amendment should not be allowed as the application was made after the expiry of the relevant period of limitation without any explanation for the delay.

[14] In support of his argument, learned counsel cited *Bruce v Odhams Press Ltd* [1936] 1 KB 697. In that case the plaintiff brought an action for libel against the defendant based on certain articles concerning certain aeroplane smuggling exploit of 'an English woman' without naming or describing her as the woman referred to. On the defendant's application for better particulars, it was held that the defendant was entitled to the particulars of the special facts and circumstance to show that the articles referred to her. It appears to me that that case does not afford much help in deciding the issue involved in this appeal as it concerned an application for better particulars, which is not the case here. There are however certain observations made in the judgment which seem to suggest that in a libel action it is not sufficient to allege the cause of action in general terms. In a case where the plaintiff is not identified, by name or otherwise, the pleading must state the facts and matters from which it is to be inferred that the words were published of the plaintiff (see also *Atip bin Ali v Josephine Doris Nunis & Anor* [1987] 1 MLJ 82).

[15] Be that as it may, for the purpose of this appeal we find it unnecessary to venture further into the question as to whether the proposed amendment sought to introduce a new cause of action or otherwise as it can still be decided even on the assumption that it has that effect.

[16] The law for leave to amend pleading is well settled. Under O 20 r 5 of the RHC, a judge has a wide discretion to amend pleading. There is no doubt that as a matter of general principle leave to amend is readily given at any stage of the proceedings, however late, provided that it causes no injustice to the parties. In *Yamaha Motor Co Ltd v Yamaha (M) Sdn Bhd*, Mohd Azmi FCJ, outlined three basic questions to be considered whether injustice would or would not result in any proposed amendment, that is to say, firstly, whether the application is bona fide, secondly, whether any prejudice caused can be compensated by costs, and thirdly, whether the amendment would not in effect turn the suit from one character to another.

[17] Leave to amend may also be given in a case where the application is made after the relevant period of limitation current at the date of issue of the writ has expired notwithstanding that the effect of the proposed amendment will be to add a new cause of action if it arises out of the same facts as a cause of action in respect of which relief has been claimed (see O 20 rr 2 and 5 of the RHC).

[18] In *Abdul Johari bin Abdul Rahman v Lim How Chong & Ors*, Abdul Malek Ahmad JCA (as he then was) observed that the court should lean in granting applications for amendments when a new cause of action or line of defence is raised provided that it is based on the same facts or arose out of the same transaction.

[19] Similarly in the Supreme Court case of *Hock Hua Bank Bhd v Leong Yew Chin* [1987] 1 MLJ 230; [1987] 1 CLJ 126, Abdul Hamid Omar Ag LP (as he then was), on amendment after the expiry of limitation period, said at p 232 (MLJ); p 131 (CLJ):

> It is also clear from the established principle that the court has power to grant an amendment after the expiry of the limitation period notwithstanding that the effect of the amendment will be to add or substitute a new cause of action subject to one very important condition, namely, that a new cause of action must arise out of the same or substantially the same facts as the cause of action in respect of which relief has already been claimed.

On the interpretation of the said O 20 r 5(5), Syed Agil Barakbah SCJ, in the same case also said, at p 235 (MLJ); p 132 (CLJ):

> The question in each case is whether the facts alleged in the amendment sought to be made are the same or substantially the same as those alleged to support a cause of action already pleaded. (*The Supreme Court Practise 1985*, Vol 1, p 345). That, I think, is the test to be applied in this case. The provision of para 5 is clear and not ambiguous. It is therefore necessary to interpret the words in their plain and ordinary meaning in accord with the intention of the legislature, and should not

A however be extended beyond its natural and proper limit (see *Government of Malaysia v Mohamed Amin bin Hassan* [1986] 1 MLJ 224, at p 228 and 231).

[20] The general principle aforesaid was also echoed in *Gatley on Libel and*
B *Slander*, (9th Ed 1998) where, in discussing amendment in defamation cases, the learned author said, at pp 674–675 para 26.40, that 'an amendment may be allowed notwithstanding that the effect will be to add or substitute a new cause of action outside the relevant period of limitation'.

C **[21]** In the instant appeal, we agree with learned counsel for the appellant that even if the proposed amendment gives rise to a new cause of action, but it does not turn the suit from one character into another. It is to be observed that the proposed amendment is inserted in relation to the publication referred to in paras 7 and 8 of the statement of claim. Upon close perusal of
D the said paragraphs, it is clear to us that the appellant had in fact pleaded therein that the impugned statements or words were understood to infer and refer to him. In our view, even though the proposed amendment appears to be massive but in reality it merely seeks to supplement what has been earlier pleaded in the said paragraphs to show that the words complained of referred
E to the appellant.

[22] Next, we will deal with the issue of delay advanced on behalf of the respondents. It is submitted that learned judge in disallowing the application had correctly considered the facts that the application was not made at the
F earliest opportunity and that there was no explanation given for the delay. In support thereof, learned counsel cited the case of *Taisho Co Sdn Bhd v Pan Global Equities Bhd & Anor* [1999] 1 MLJ 359; [1999] 1 CLJ 703, where this court affirmed the decision of the learned judge in refusing to grant leave to the appellant to amend the statement of claim after expiry of the relevant
G period of limitation in the absence of any explanation for the delay. In our view that case is distinguishable as the facts showed that application for leave to amend was only made four years after the commencement of the action and after the appellant has failed in his appeal to strike out the respondent's defence of limitation, whereas in the present case there was a lapse of only
H eight to nine months in making the application which does not constitute such an ordinate delay to reflect any lack of bona fide on the part of the appellant.

[23] It is a well settled principle that an amendment ought in general be
I allowed even if it comes late, if it is necessary to do justice between the parties, so long any hardship done thereby can be compensated in money (per Lord Denning in *Associated Leisure Ltd (Photographic Equipment Co Ltd) v Associated Newspaper Ltd* [1970] 2 QB 450, at p 455). A similar view was

expressed by Abdul Malik Ishak J (as he then was) in the case of *Ultra Dimension Sdn Bhd v Sepadan Tuah Sdn Bhd; Genesis The AS Agency Sdn Bhd (Third Party)* [2000] 6 CLJ 548, where he quoted the passage from the judgment of Brett MR in *Clarapede v Commercial Union Association* (1883) 32 WR 263, as follows:

> However negligent or careless may have been the first omission, and however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated by costs.

[24] Further, in *HSBC Bank Malaysia Bhd v Macquarie Technologies (M) Sdn Bhd*, Nik Hashim JCA (as he then was) said, at p 406 (MLJ); p 129 (CLJ):

> On the question of delay, it is worthy of note that delay alone is not a ground to refuse an application for leave to amend. In *Wright Norma*, at p 519 the court held:
>
> > While the time at which an amendment is made is a relevant consideration it is not necessarily decisive. Delay per se does not equal prejudice or injustice. We do not think any rigid rule can be laid down on this.

[25] We are also satisfied that in the present case there is nothing in the evidence presented herein to suggest that the present application is made in bad faith, or that the amendment, if allowed, will cause any prejudice or injustice to the respondents. We accepted the explanation given on behalf of the appellant that the proposed amendment is necessary to do justice between the parties, and to enable the court to determine the real question in controversy between them.

[26] On the facts and circumstances of the present case and for the grounds aforesaid, in our judgment, the learned judge in disallowing the application for leave to amend not only failed to exercise his discretion judicially but has also misdirected himself in putting too much weight on the issue of delay and limitation while failing to take into account the general principle applicable in such an application.

[27] For the above reasons, we unanimously allowed the appeal with costs and set aside the order of the learned judge to which the appeal relates. We also made orders in terms of prayers (1) and (2) of the summons in chambers

dated 11 March 2008. The deposit paid into court was ordered to be refunded to the appellant.

Appeal allowed with costs.

Reported by Andrew Christopher Simon